

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**FIRST APPEAL No. 716 of 1982****For Approval and Signature:****HONOURABLE MR.JUSTICE KS JHAVERI**

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HARIJAN BAI VIRU NATHABHAI - Appellant(s)
Versus

HASAM KASAM DECD. BY HIS HEIRSRABIYABEN @ HAJUBA HASAM
KANA & 3 - Defendant(s)

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Appearance :

MR ND NANAVATI for Appellant(s) : 1,
MR JR NANAVATI for Defendant(s) : 1 - 2.
None for Defendant(s) : 3 - 4.

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CORAM : HONOURABLE MR.JUSTICE KS JHAVERI**Date : 17/08/2006****ORAL JUDGMENT**

1. This appeal under Section 30 of the Workmen Compensation Act, is directed against the award dated 09.11.1971 passed by the Commissioner of Workman Compensation, Junagadh, in W.C.C. No. 1 of 1977 whereby the same was dismissed.

2. The case of the appellant is that she is a workman and she was employed by the original opponent to do labour work on opener machine to open groundnuts from seeds. On 16.10.1976, the appellant received personal

injury by an accident arising out of and in the course of her employment. She was initially removed to Mangrol hospital and thereafter she was admitted in the Govt. Hospital, Junagadh. She therefore claimed Rs. 30,000/- by way of compensation. The Commissioner after hearing the parties passed the aforesaid order.

3. Learned advocate for the appellant has submitted that the lower court has committed an error in holding that in view of the evidence on record the appellant was not working in the field of the opponent when the accident took place.

3.1 He further submitted that the lower court ought to have relied upon the evidence of Adam Husen Girnari Exh. 28, who was the owner of the Opener machine and who has in terms stated that the opener was hired by the opponent and was installed in the field of the opponent on the day of the incident.

4. I have gone through the record of the case. The Commissioner has found in detail that the appellant has stated that she used to go for labour work to the opponent since her childhood but she has to admit

that she did not know where the opponent resided and where his house is situated disputed. The son and daughter of the opponent No. 1 are labourers. In these circumstances it is impossible to believe that applicant was engaged as labourer by the opponent. The opponent has got a small piece of land and he can't afford to hire an opener. In those circumstances, the story of the applicant and her witnesses found to be unnatural. Even as per applicant and her witness Shanta Soma Ex. 34 who is daughter of her brother, there were about ten labourers but not a single independent eye witness is forthcoming to support the say of the applicant. In the result, the applicant has failed to prove that she was workman of the opponent when the incident took place.

5. In view of the above finding I am of the view that the Trial Court has not committed any error in passing the impugned order. I am in complete agreement with the reasonings adopted and the findings arrived at by the trial court. No case is made out to cause interference. Hence the appeal is dismissed. No order as to costs.

(K.S.JHAVERI, J.)

Suresh*